


**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>MICHAEL WILKINS, SR.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>No. 04 C 5000</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Defendant.</b>	)	

**MEMORANDUM OPINION AND ORDER**

On August 31, 2004, we rejected petitioner's claims that he received ineffective assistance of counsel and the court abused its discretion relating to consideration of a downward departure. We left open the claim of ineffective assistance of counsel for failure to pursue a desired direct appeal and asked both counsel and petitioner to further respond.

Counsel has filed an affidavit in which he states he discussed with petitioner a possible appeal on March 23, 2004, the sentencing date, that petitioner decided not to appeal, and that he signed a handwritten waiver of appeal on that date. A copy of that waiver is an exhibit to the affidavit. Petitioner does not dispute that he signed the waiver and that he did not reach counsel at any time during the following ten days. In those circumstances, a failure to pursue an appeal can hardly be ascribed to ineffective assistance of counsel. Accordingly, the petition is dismissed.

  
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**JAMES B. MORAN**  
Senior Judge, U. S. District Court

Feb. 1, 2005.